No. 82-[redacted]

DEC 7 [redacted]

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In the Supreme Court of the United States

OCTOBER TERM, 1982

MELVILLE G. ADKINS, SR., *et al.*, PETITIONERS

v.

SAFEWAY, INC., and
MILK DRIVERS AND DAIRY EMPLOYEES
UNION LOCAL NO. 246, ETC.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the District of Columbia Circuit

BRIEF FOR SAFEWAY, INC. IN OPPOSITION

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QUESTION PRESENTED

Whether petitioners' appeal was properly dismissed because their notice of appeal stated only that "plaintiffs" were appealing and thus failed to comply with Fed. R. App. P. 3(c), which provides that a "notice of appeal shall specify the party or parties taking the appeal."

STATEMENT UNDER RULE 29.1

In accordance with Rule 29.1 of the Rules of this Court, respondent Safeway, Inc. states that it has no parent and one subsidiary: Casa Ley S.A. de C.V., a Mexican corporation.

At the time of the district court decision in this case, respondent was known as Safeway Stores, Inc. The name of the corporation was changed to Safeway, Inc. and on April 24, 1992, the court of appeals entered an order changing the caption of the case to reflect the change of corporate name.

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In the Supreme Court of the United States

OCTOBER TERM, 1992

No. 92-642

MELVILLE G. ADKINS, SR., *et al.*, PETITIONERS

v.

SAFEWAY, INC., and
MILK DRIVERS AND DAIRY EMPLOYEES
UNION LOCAL NO. 246, ETC.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF FOR SAFEWAY, INC. IN OPPOSITION

Respondent Safeway, Inc. respectfully submits this brief in opposition to the petition for a writ of certiorari in this case.

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A3-A7) is reported at 968 F.2d 1317. The opinion of the district court (Pet. App. A11-A20) is not reported.

STATEMENT OF JURISDICTION

The order of the court of appeals dismissing petitioners' appeals (Pet. App. A1-A2) was entered on April 20, 1992. The orders of the court of appeals

denying rehearing (Pet. App. A8-A9) and rehearing *en banc* (Pet. App. A10) were entered on July 16, 1992. The jurisdiction of this court is invoked under 28 U.S.C. § 1254(1).

STATUTES AND RULES INVOLVED

The text of Rule 3 of the Federal Rules of Appellate Procedure is reproduced at pages 3-4 of the petition.

STATEMENT OF THE CASE

In November 1989, petitioners filed this lawsuit against their employer, Safeway, Inc., and their union, Milk Drivers and Dairy Employees Union Local No. 246, for alleged violations of the Age Discrimination in Employment Act ("ADEA") and the union's duty to represent them fairly. These allegations addressed the 1989 Safeway-Local 246 collective bargaining agreement, which set forth the terms and conditions of petitioners' employment. The 1989 agreement represented the culmination of many years of collective bargaining regarding the basis on which petitioners were paid.

For decades, Safeway's dairy drivers had been paid both an hourly rate and "sales commissions" on the dairy products they delivered to the Company's stores. And for decades, Safeway attempted without success to eliminate these commissions in collective bargaining. Finally, in 1969, Local 246 agreed to a new compensation arrangement that permitted the Company to pay *newly-hired* dairy drivers a flat hourly rate or reduced commissions, whichever was greater. The agreement retained, however, unreduced commissions for those on the seniority list as of June 8, 1969.

Although the Company returned to the topic each time the parties bargained for a successor agreement, it was able to make only marginal inroads on the commission arrangement in succeeding years. In 1976, the parties agreed that all drivers hired after the contract date would receive compensation based only on an hourly rate. In 1984, the parties eliminated commissions entirely for those hired between 1969 and 1976, but they again retained undiminished commissions for those hired prior to the 1969 agreement.

Finally, in 1989, Safeway achieved its longstanding bargaining goal of eliminating the commission payments altogether. The Company made significant concessions to achieve this objective. In particular, Safeway agreed to a substantial increase in the now-uniformly applied hourly rate, and it agreed to a series of "transition bonuses" payable to the "pre-1969" drivers to ease their transition to the uniform pay scale. By the end of the 1989 agreement's three-year term, *all* of the dairy drivers, regardless of their date of hire, were to be paid at *precisely* the same hourly rate.

Alleging that the ADEA statutorily guaranteed them the undiminished preferred status embodied in their 1969 collective bargaining agreement, 13 of the Company's 16 pre-1969 drivers—who by 1989 were all over 40 years of age and thus within the ADEA's protected class—filed this lawsuit. On cross-motions for summary judgment, the district court concluded that the plaintiffs had adduced no evidence of discrimination. The court found that the contract was driven by legitimate economic considerations and "had nothing to do with age." Pet. App. A19. The agreement, the court held, merely recognized that

"all union dairy drivers performed the same tasks and were to be paid the same wage." Pet. App. A16. The court also noted that, although all plaintiffs were over 40 by the time the commission system was finally eliminated, 10 of the 12 drivers hired *after* 1969 were *also* over 40, and the remaining two post-1969 drivers were just shy of 40. *Id.* at A19. The court therefore concluded that there was little, if any, correlation, as a factual matter, between the plaintiffs' protected status and their loss of special compensation status under the 1989 agreement. *Id.* Accordingly, the court granted respondents' dispositive motions and dismissed the lawsuit. *Id.* at A19-A20.

Petitioners' counsel, who represented all 13 plaintiffs, filed a notice of appeal with the district court on July 19, 1991. Pet. App. A21. The caption of the notice of appeal recorded the style of the action as "Donald Leroy Adkins, et al., Plaintiffs, vs. Safeway Stores, Inc., et al." *Id.* The body of the notice of appeal stated that "plaintiffs respectfully notice their appeal" to the D.C. Circuit. It did not, in any manner, designate or specify which plaintiffs were appealing. *Id.* Petitioners' counsel did not file any other documents with the notice of appeal at that time or within the 30-day period during which a notice of appeal can be filed. *See* Fed. R. App. P. 4(a)(1); 28 U.S.C. § 2107; Pet. 3, 4-5.

Because the notice failed to specify the parties taking the appeal as required by Fed. R. App. P. 3(c), respondents moved to dismiss the appeal for lack of jurisdiction. Pet. 7. On April 20, 1992, the court of appeals granted respondents' motions as to all of the plaintiffs who are now petitioners in this Court. Pet. App. A1. As to plaintiff Donald Leroy Adkins, whose name, by happenstance, was listed first in the

complaint and thus was included in the caption of the notice of appeal, the court of appeals' motions panel declined to decide the question of appellate jurisdiction and referred that issue to the merits panel.[1] Pet. App. A2.

Petitioners sought rehearing by the court of appeals and suggested rehearing *en banc*. On July 10, 1992, the court of appeals issued an opinion in support of its April 20, 1992, order of dismissal. Pet. App. A3-A7. On July 16, 1992, the court of appeals denied petitioners' petition for rehearing and suggestion for rehearing *en banc*. *Id.* at A8-A10.

ARGUMENT

The court of appeals' decision is correct and further review is not warranted. This Court has already spoken in some detail about the requirements of Fed. R. App. P. 3(c), the relevant decision is quite recent, and the court of appeals' ruling here is the only result possible under that precedent. As the Court held in *Torres v. Oakland Scavenger*, 487 U.S. 312, 318 (1988), Rule 3(c) obligates every appealing party to identify in its notice of appeal "the specific individual or entity seeking to appeal." Petitioners did not satisfy that requirement.

Moreover, despite petitioners' attempt to contrive widespread disagreement among the courts of appeals on this issue, appellate court application of *Torres* has been nearly uniform. On facts like those presented here, eight other circuits have reached the same result reached by the court of appeals. As ex-

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[1] Donald Adkins' appeal is currently being briefed in the D.C. Circuit and is scheduled for oral argument on February 5, 1993.

plained further below, only the Ninth Circuit has chosen a different path, and this Court has repeatedly denied review of decisions like the one below, even after the Ninth Circuit's departure from the overwhelming weight of authority. If the Court believes it necessary at some point to revisit the proper interpretation and application of Rule 3(c), review would be more appropriate in a case in which a court of appeals has improperly refused to dismiss an appeal notwithstanding *Torres*, rather than in a case like this, in which *Torres* has been faithfully followed.

Finally, the question posed by petitioners is unlikely to have continuing significance. In light of pending changes to the text of Fed. R. App. P. 3(c) that bear on this very subject, a decision rendered by this Court on the language of the current Rule would likely be of little long-term importance to the bench or bar.

I. THE COURT OF APPEALS CORRECTLY RULED THAT THE NOTICE OF APPEAL FAILED TO SPECIFY THAT PETITIONERS WERE PARTIES TO THE APPEAL

The court of appeals correctly applied the relevant rule of procedure in this case. By requiring that the notice of appeal identify with some precision the parties taking the appeal, the appellate court did no more than give the term "specify" as used in Fed. R. App. P. 3(c) its ordinary and common sense meaning, *i.e.*, "to mention, describe or define *in detail*." Webster's New World Dictionary, p. 1367 (1980 ed.) (emphasis added). *See Pavelic & LeFlore v. Marvel Entertainment*, 493 U.S. 120, 123 (1989) (Federal Rules are to be given "their plain meaning").

Moreover, the construction given the Rule below was required by this Court's decision in *Torres v. Oakland Scavenger*, 487 U.S. 312 (1988). In *Torres*, the unsuccessful plaintiffs in the district court action filed a notice of appeal that listed in its body the proper names of 15 of the 16 plaintiffs, followed by the designation "et al.". After the court of appeals reversed the district court's decision dismissing the case and remanded the case, appellee argued that the trial court's original dismissal of the complaint was final as to the sixteenth plaintiff, Mr. Torres, because he was not named in the notice of appeal and therefore the court of appeals never had jurisdiction over his claim. Mr. Torres argued that his absence from the list of appellants in the notice was irrelevant because the "et al." designation—literally "and another" [2]—could only have referred to him, since he was the only plaintiff not already named in the body of the notice. He also argued that no one was harmed or misled by the omission of his name because all parties to the case understood that *all* of the plaintiffs intended to appeal.

This Court rejected both contentions. First, it held that the specificity requirement of Rule 3(c) is a jurisdictional predicate to an appeal and thus the harmless error analysis urged by Mr. Torres simply had no application. 487 U.S. at 315. The argument, the Court held, "misunderstands the nature of a jurisdictional requirement: a litigant's failure to clear a jurisdictional hurdle can never be 'harmless' or waived by a court." *Id.* at 317 n.3. Indeed, the Court held, "the failure to name a party in a notice of appeal is more than excusable 'informality'; it constitutes a failure of that party to appeal." *Id.* at 314.

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[2] Black's Law Dictionary 496 (5th ed. 1979).

Second, the Court ruled that the term "*et al.*" did not suffice to indicate Mr. Torres' intention to appeal. 487 U.S. at 317-18. The Court stated:

> Petitioner did not file the functional equivalent of a notice of appeal; he was never *named or otherwise designated*, however unartfully, *in the notice of appeal* . . . . The specificity requirement of Rule 3(c) is met only by some designation that gives fair notice *of the specific individual* or entity seeking to appeal.

Id. (emphasis added). "Permitting such [a] vague designation [as "et al." to satisfy Rule 3(c)] would leave the appellee and the court unable to determine *with certitude* whether a losing party not named in the notice of appeal should be bound by an adverse judgment or held liable for costs or sanctions." *Id.* at 318 (emphasis added).

Petitioners attempt to distinguish *Torres* by asserting that the notice of appeal involved in that case merely omitted Mr. Torres' name from a list of the other 15 plaintiffs. "By omitting Torres from the list of appellants," petitioners explain, "the notice communicated that Torres did *not* appeal." Pet. 9-10 (emphasis in original). But this ignores the central fact on which the petitioner in *Torres* relied. The notice's list of 15 appellants was followed by "et al.", a designation that on the facts of the case could only have applied to Mr. Torres. As the court of appeals here correctly recognized, "[I]f the term '*et al.*' was insufficient to provide [the required] notice in *Torres*, where there was only one unnamed plaintiff to whom it might refer, then it is surely insufficient here, where '*et al.*' [as used by petitioners in the caption of the notice of appeal] could refer to

any one or more of the twelve unnamed drivers."[3] Pet. App. A6.

Petitioners now argue that they were "named or otherwise designated" in their notice of appeal because "[a]ny person reading the notice knows that if all of the plaintiffs were not appealing, the notice would have identified by name those who were appealing . . . or those who were not." Pet. 10. Petitioners also argue that a reader with doubts about the identity of the appealing parties could simply refer to another document, *i.e.*, the docket entries transmitted from the district court to the court of appeals pursuant to Fed. R. App. P. 3(d). *Id.*

As to the first point, it can hardly be self-evident that "plaintiffs" or "plaintiffs *et al.*" invariably means "all plaintiffs". Nine courts of appeals, including the court below, have concluded otherwise:

First Circuit:

> *Rosario-Torres v. Hernandez-Colon*, 889 F.2d 314, 317 (1st Cir. 1989)

Second Circuit:

> *Shatah v. Shearson/American Express, Inc.*, 873 F.2d 550, 552 (2d Cir. 1989)

Fifth Circuit:

> *Morales v. Pan Am Ins. Co.*, 914 F.2d 83, 85 (5th Cir. 1990)

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[3] Whatever else might be said about the appellants' use of the "et al." designation in *Torres*, it was at least clear that it had been used in the *body* of the notice in an unsuccessful attempt to identify the parties *to the appeal*. Here, the "et al." designation appeared in the *caption* and identified only *the plaintiffs in the district court*.

Sixth Circuit:

Minority Employees v. Tennessee Dept. of Employment Security, 901 F.2d 1327, 1334-35 (6th Cir. 1990), *cert. denied*, 111 S. Ct. 210 (1991)

Seventh Circuit:

Pride v. Venango R. Corp., 916 F.2d 1250, 1252-53 (7th Cir. 1990), *cert. denied*, 111 S. Ct. 1696 (1991)

Eighth Circuit:

United States v. Schneider, 926 F.2d 777, 779 (8th Cir. 1991)

Tenth Circuit:

Laidley v. McLain, 914 F.2d 1386, 1388-89 (10th Cir. 1990)

Eleventh Circuit:

Cotton v. U.S. Pipe & Foundry Co., 856 F.2d 158, 162 (11th Cir. 1988)

District of Columbia Circuit:

Adkins v. Safeway, Inc., 968 F.2d 1317, 1319 (D.C. Cir. 1992)

All of these courts found the unadorned term "plaintiffs" insufficient to comply with Rule 3(c) and insufficient to disclose "with certitude whether a losing party . . . should be bound by an adverse judgment . . . ." *Torres*, 478 U.S. at 318. Petitioners' implicit argument is that all of these courts of appeals have given the term "plaintiffs" an inherently unreasonable, and unduly restrictive, construction. In fact, the result reached by all of these courts is the only one consistent with *Torres*.

Petitioners' second claim—that ambiguities in the notice itself can be clarified by resort to extrinsic aids—is simply irreconcilable with the text of Rule 3(c). The Rule mandates that "the *notice of appeal* . . . specify the party or parties taking the appeal . . . ." *Id.* (emphasis added). There is simply no relevance to petitioners' post-hoc assertion that *other* documents available to the court and the appellees—in particular, the docket entries in the district court—adequately specified the appealing parties.

This was made plain last term in *Smith v. Barry*, 112 S. Ct. 678 (1992). In *Smith*, this Court held that Rule 3(c) can be satisfied by any document containing the information required by the Rule that is filed by a putative appellant within the time limits specified by Rule 4(a). *Id.* at 682. The docket entries relied upon by petitioner fail on all counts. First, Rule 3(c) requires that the notice (or its "functional equivalent") be *filed in the district court by the parties seeking appeal.* Petitioners did not file the docket entries in the district court or anywhere else. Second, the docket entries in this case were transmitted to the court of appeals (by the clerk of the district court) on July 23, 1991, 32 days after the district court's decision and thus beyond the time limits provided in Rule 4(a).

More fundamentally, the docket entries specify only *the plaintiffs to the district court action*, not the parties on appeal. Although *petitioners* may have known at the time the Notice was filed that the plaintiffs listed in the docket entries were all seeking to appeal, nothing on the face of the Notice or the docket entries specifies that fact. Indeed, all of the parties to a district court proceeding are routinely identified in the district court docket entries. The

fact that the parties are named there communicates nothing about the intentions of the parties regarding appeal. This case is therefore distinguishable from cases like *Masquerade Novelty Inc. v. Unique Indus. Inc.*, 912 F.2d 663 (3d Cir. 1990), and *Good Samaritan Hosp. v. Sullivan*, 952 F.2d 1017 (8th Cir. 1991), *cert. granted on other grounds*, 113 S. Ct. 319 (1992), in which timely notices of appeal were accompanied by appeal information forms naming each appealing party *and* designating them as such.

In fact, the specific district court docket entry for the notice of appeal in this case reflects only that a notice of appeal was filed "by *plaintiff*." Pet. App. A32 (emphasis added). Thus, had appellees or the court of appeals looked to the docket entries to determine who was appealing, they might well have concluded that 12 of the 13 plaintiffs below had accepted the judgment of the district court and had *not* appealed.

II. WITH ONE EXCEPTION, THE DECISION BELOW IS CONSISTENT WITH THE VIEW OF ALL OTHER CIRCUITS DECIDING THIS ISSUE

Petitioners attempt to manufacture a degree of conflict among the circuits in the application of *Torres* that simply does not exist. In fact, the court below stands together with nearly all other circuits in interpreting the specificity requirements of Rule 3(c). As noted above, eight other federal courts of appeals have ruled that a notice of appeal fails to identify sufficiently the appealing parties when it refers merely to "plaintiffs" or "plaintiffs, *et al.*" without naming the appellants. *Rosario-Torres v. Hernandez-Colon*, 889 F.2d 314, 317 (1st Cir. 1989); *Shatah v. Shearson/American Express, Inc.*, 873 F.2d 550, 552

(2d Cir. 1989); *Morales v. Pan Am Ins. Co.*, 914 F.2d 83, 85 (5th Cir. 1990); *Minority Employees v. Tenn. Dept. of Employment Security*, 901 F.2d 1327, 1334-35 (6th Cir. 1990), *cert. denied*, 111 S. Ct. 210 (1991); *Pride v. Venango R. Corp.*, 916 F.2d 1250, 1252-53 (7th Cir. 1990), *cert. denied*, 111 S. Ct. 1696 (1991); *United States v. Schneider*, 926 F,2d 777, 779 (8th Cir. 1991); *Laidley v. McLain*, 914 F.2d 1386, 1388-89 (10th Cir. 1990); *Cotton v. U.S. Pipe & Foundry Co.*, 856 F.2d 158, 162 (11th Cir. 1988).

In an attempt to manufacture a serious rift among the circuits where none exists, petitioners resort to blurring the distinction between the defect underlying their notice of appeal—the insupportable assumption that "plaintiffs" always must mean "all of the plaintiffs"—and a different kind of issue raised in a wholly distinct line of cases. This second line of cases merely recognizes that a party to an appeal can be "specified" for purposes of Rule 3(c) even when it is not listed by its proper name in the body of the Notice. For example, in *Baylis v. Marriott Corp.*, 906 F.2d 874, 876-77 (2d Cir. 1990), and *Adkins v. United Mine Workers of America*, 941 F.2d 392, 397-98 (6th Cir. 1991), *cert. denied*, 112 S. Ct. 1180 (1992), the appellants did what petitioners here did not. They recorded in the body of their notices of appeal that "*all* of the plaintiffs" in the respective actions sought to appeal. 906 F.2d at 877; 941 F.2d at 396, 398 (emphasis added). In contrast, the notice of appeal in this case states merely that "plaintiffs" appeal, without specifying whether all or only some of the plaintiffs were included. Thus *Baylis* and *Adkins* are fully consistent with the ruling below and the rulings from the other courts of appeals that have

considered the specificity requirement of Rule 3(c) after *Torres*.[4]

Only the Ninth Circuit has adopted an aberrant view. *See, e.g., National Center for Immigration Rights, Inc. v. U.S. Immigration and Naturalization Services*, 892 F.2d 814 (9th Cir. 1989); *Gilbreath v. Cutter Biological Inc.*, 931 F.2d 1320 (9th Cir. 1991). In *National Center*, the Ninth Circuit articulated the invariable rule that, in construing a notice of appeal, "defendants" always means "all defendants." "[I]f only some defendants desired to appeal those defendants could have identified themselves individually." 892 F.2d at 816. Similarly, in *Gilbreath*, the Ninth Circuit concluded that, although the notice of appeal itself did not specify each appealing party, "[t]here was no need for appellants to list each party individually, since appellees could have covered [*sic*; discovered] their identities by referring to the lower court proceedings." This holding is squarely inconsistent with the plain language of Rule 3(c), which requires specificity *in the notice of appeal*. Certainly all of the plaintiffs in *Torres* were named in "the lower court proceedings," yet this Court ruled that the court of appeals lacked jurisdiction over Mr. Torres' putative appeal because he was not "named or otherwise designated in the *notice of*

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[4] Indeed, in granting respondents' motions to dismiss, the D.C. Circuit recognized the very principle for which *Baylis* and *Adkins* stand and cited its own decision on this point, *Milanovich v. Costa Crociere, S.p.A.*, 938 F.2d 297, 298 (D.C. Cir. 1991). Pet. App. A6. In *Milanovich*, the notice of appeal specified that Mr. Milanovich "et ux." sought to appeal. Because, by definition, the term "et ux." could only refer to Mr. Milanovich's wife, the court held that she had been "specified" within the meaning of Rule 3(c).

appeal . . . ." *Torres*, 487 U.S. at 317 (emphasis added).

Indeed, some judges on the Ninth Circuit have recognized the conflict between *Torres* and the *National Center* rule. In *Graves v. Raypak, Inc.*, 891 F.2d 254 (9th Cir. 1989), *withdrawn by order of the court*,[5] the Ninth Circuit held that a notice failed to specify with certitude the appealing parties because the body of the notice indicated only that "Plaintiffs hereby appeal." The court found it "obvious[]" that the word "plaintiffs" "fail[ed] to specify which of the five plaintiffs below [were] seeking to appeal . . . ." The panel rejected the interpretation of Rule 3(c) that petitioners urge here because it could not be reconciled with *Torres*. Although the *Graves* opinion was subsequently withdrawn in favor of the more permissive standard enunciated in *National Center* (Order dated February 2, 1990), Safeway submits that the *Graves* panel had it right. The court of appeals in this case was correct in embracing the view of the overwhelming majority of circuits. If this Court is to grant certiorari to elucidate further its *Torres* rule, it should select a case decided under the Ninth Circuit's aberrant interpretation.

III. THE JUDICIAL CONFERENCE HAS PROPOSED CHANGES IN RULE 3(c) THAT WOULD ELIMINATE THE ISSUE PRESENTED HERE

The limited resources of this Court are best applied to resolving issues of lasting importance to the bench, the bar, and the public. They should rarely be spent on reinterpreting settled rules. To the extent Rule

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[5] The withdrawn *Graves* opinion may be accessed on LEXIS, 1989 U.S. LEXIS App. 18782.

3(c) requires either clarification or correction, this Court has the opportunity to accomplish those goals through another channel more effective than granting review in this case.

On September 22, 1992, the Judicial Conference of the United States approved changes to Rule 3(c) proposed by the Advisory Committee on Appellate Rules. The Judicial Conference has now sent the proposed changes to this Court for its approval before they are submitted to Congress. As approved by the Judicial Conference, Rule 3(c) would amend the specification requirements of *Torres* so substantially that any decision from this Court on the meaning of the current Rule 3(c) would be of no future significance.[6] If the

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[6] If approved, the new Rule 3(c) would read as follows:

> (c) Content of the Notice of Appeal.—A notice of appeal must specify the party or parties taking the appeal by naming each appellant either in the caption or the body of the notice of appeal. An attorney representing more than one party may fulfill this requirement by describing those parties with such terms as 'all plaintiffs,' 'the defendants,' 'the plaintiffs A, B, et al.,' or 'all defendants except X.' A notice of appeal filed pro se is filed on behalf of the party signing the notice and the signer's spouse and minor children, if they are parties, unless the notice of appeal clearly indicates a contrary intent. In a class action, whether or not the class has been certified, it is sufficient for the notice to name one person qualified to bring the appeal as representative of the class. A notice of appeal also must designate the judgment, order or part thereof appealed from, and must name the court to which the appeal is taken. An appeal will not be dismissed for informality of form or title of the notice of appeal or for failure to name a party whose intent to appeal is otherwise clear from the notice. Form 1 in the Appendix of Forms is a suggested form for a notice of appeal.

Court determines that more explicit guidance on the degree of specificity required by Rule 3(c) is needed, that aim can best be accomplished by amending the Rule, either in the manner proposed by the Judicial Conference or in some other manner that commends itself to the Court and Congress.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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